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## Authority Budget Office Policy Guidance



**No.** 07-01

**Date Issued:** March 1, 2007

**Supercedes:** New

**Subject:** Independence of Board Members

**Statutory Citation:** Section 2825(2) of Public Authorities Law

**Provision:** Section 2825(2) of the Public Authorities Law requires that “except for members who serve as members by virtue of holding a civil office of the state, the majority of the remaining members of the governing body of every state or local authority shall be independent members.”

This provision applies to the composition of the board following appointments made on or after January 15, 2006.

**Authority Budget Office Policy Guidance:** The importance of establishing and preserving the independence of board members is to: (a) avoid conflicts of interest or the appearance of conflicts of interest in the actions and decisions of directors; (b) encourage directors to act in accordance with the mission and interests of the authority; and (c) distinguish between the oversight function of board members and the management responsibilities of executive staff. A board member is considered to be independent if all of the following criteria are met:

- The board member is not currently an employee of the public authority in an executive position, nor was an employee of the public authority in an executive position in the past two years.
- The board member is not or has not been in the previous two years, employed by an entity that received a payment valued at more than fifteen thousand dollars for goods and services provided to the public authority, as well as any other form of financial assistance valued at more than fifteen thousand dollars from the public authority.
- The board member is not a relative of an executive officer or employee in an executive position of the public authority or an affiliate.
- The board member is not a lobbyist registered under a state or local law and paid by a client to influence the management decisions, contract awards, rate determinations or any other similar actions of the public authority or affiliate.

In addition, an appointed director may be an employee of a county or local government and have some professional involvement with the public authority and still be independent. However, if a board member (1) is a member of a legislative body, or (2) is the chief executive officer, or (3) holds a policymaking position with a municipal government, that board member would not be independent if the public authority pays the municipal government \$15,000 or more annually for goods and services that are provided to the public authority by the municipal government. As a best practice it is not recommended that a majority of appointed board members have a political or employment relationship to the government for whose purpose the public authority was created.

Ex officio directors, by statute, are considered independent and may sit on the authority's audit, finance or governance committee, although, to the extent practicable, boards are encouraged to select appointed directors who meet the independence criteria to these committees.

Board members may consult with the individuals who appointed them without losing their independence provided the board member's decisions are made in the interests of the public and consistent with the mission of the authority.

The ABO also recognizes that it is not uncommon for board members to have personal or professional relationships with vendors who may do business with the public authority. In such cases, board members must disclose any relationship prior to the authority considering doing business with the vendor and the board member should be recused from any board discussion or decision on such a transaction. Board members also should not discuss any qualities of the vendor with staff of the authority. In all cases, board members are to: avoid situations that could compromise their independence; act with transparency; and exercise their fiduciary duties of loyalty and care. This will require that directors weigh the public's interests and that of their appointing authorities when taking on these duties and be sensitive to potential conflicts of interest or the appearance of a conflict.

If the majority of directors appointed to a public authority do not meet this definition of independence, the official or officials having the authority to appoint or remove board members should take appropriate actions to address this issue.